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09/696,709	10/24/2000	Lewis H. Lambert JR.	11016US05/100-236.P2.C2	3310
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Janet M McNicholas Esq			EXAMINER	
500 W Madison	eld & Malloy Ltd Street 34th Floor		SNEDDEN, SHERIDAN	
Chicago, IL 60	1001		ART UNIT	PAPER NUMBER
			1653	
			DATE MAILED: 04/04/2002	

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary Examiner Sheridan K Snedden The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely. If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).		Application No.	Applicant(s)					
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Application/Control Number: 09/696,709

Art Unit: 1653

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-4 and 9-11, drawn to a composition of BPI, stabilizing copolymer and poloxamer surfactant, classified in class 424, subclass 405
- II. Claims 5-8 and 12-14, drawn to a method of treating bacterial and/or fungal infections, classified in class 514, subclass 12.

The inventions are distinct, each from the other because of the following reasons:

Invention I is related to Inventions II as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the composition of Invention I can be used in a materially different process such as isolation of proteins to which BPI binds, e.g. specification page 4 line 17, LPS binding and neutralization.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

A telephone call was made to Janet M. McNicholas, Ph.D. on March 19th, 2002 to request an oral election to the above restriction requirement, but did not result in an election being made.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sheridan K Snedden whose telephone number is (703) 305-4843.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher S Low can be reached on (703) 308-2923. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 746-3975 for regular communications and (703) 746-3975 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

SKS March 28, 2002 SKS

CHRISTOPHER S. F. LOW
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600

Christopher S.J. hrs